

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP No. 2990 of 1984
Date of decision: 10.10.2007

Kartar Singh		...Petitioner
	Versus	
State of Punjab and others		...Respondents.

(2) CWP No. 2991 of 1984

Nazar Singh		...Petitioner
	Versus	
State of Punjab and others		...Respondents.

(3) CWP No. 2992 of 1984

Harnek Singh and another		...Petitioners
	Versus	
State of Punjab and others		...Respondents.

(4) CWP No. 2993 of 1984

Mit Singh		...Petitioner
	Versus	
State of Punjab and others		...Respondents.

(5) CWP No. 2994 of 1984

Harmeet Kaur and others	...Petitioners
Versus	
State of Punjab and others	...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. K. S. Grewal, Advocate,
for the petitioners.

Mr. Y.K. Sharma, D.A.G., Punjab.

Mr. Baldev Singh Sandhu, Advocate, for
the Gram Panchayat.

K.S.GAREWAL, J.

This judgment shall dispose of the five petitions mentioned above, which have raised common legal issues.

The petitioners belong to Kikkar Khera, Tehsil Fazilka, District Ferozepur, and were ordered to be ejected from their respective parcels of land, on the basis of applications filed on April 27, 1982 under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Recovery Act, 1973 by the Gram Panchayat of their village.

The Panchayat's case was that the petitioners were in unauthorized occupation. Panchayat had also sought recovery of damages for the past 10 years.

Notices were issued by the Collector to the petitioners to show cause as to why they should not be evicted and why damages alongwith interest @ 8% be not recovered from them since they were in unauthorized occupation of the land.

The petitioners appeared and contested the claim of the Panchayat by stating that they were the owners for the past 35 years and not the Panchayat, earlier their grand-fathers were cultivating the land. The parties were given opportunities to lead evidence. The Panchayat supported its case by relying upon jamabandi for the year 1976-77 which showed that the land vested in the Panchayat, khasra girdawari for the year 1981 showed that the petitioners were in cultivating possession.

The petitioners on the other hand, led evidence of three witnesses and presented the past land revenue record. The Collector found that the land belonged to the Panchayat as owner, the petitioners were in unauthorized use and occupation thereof. Consequently, orders were passed by the Collector on March 24, 1983 evicting the petitioners.

The petitioners filed appeals before the Commissioner, who upheld the eviction order.

The first argument of the learned counsel for the petitioners is that the land did not vest in the Gram Panchayat because before 1956-57 the land was shown as shamlat deh hasab paimana malkiat. The land vested in the proprietary body. Mutation 1139 was sanctioned on December 10, 1955 transferring the ownership to the Gram Panchayat on the basis of a notification dated February 24, 1955. The mutation was placed on record through CM 6360 of 2004 filed in CWP 1984 of 1994 but this covers all the five writ petitions.

The second argument of the learned counsel was that a composite application under Sections 5 and 7 was not maintainable. This was because, first of all the Collector has to form an opinion that a person is in unauthorized occupation of the public premises and then issue a notice calling upon that person to show cause why an order of eviction should not be passed against him. The notice issued to the concerned person has to specify the ground on which the order of eviction is proposed to be made and shall require to concerned person to show cause on or before a specified date, which should not be earlier than 10 days from the date of issue of the notice.

The Collector is then required to hear the matter and after considering the cause shown and giving reasonable opportunity to the person concerned of being heard, decide whether the public premises is in unauthorized occupation or not. The Collector is thereafter to record his reasons and direct that the public premises should be vacated. This is the requirement of the provision of section 5. According to the petitioners, no prior notice was issued under Section 4. The Collector straightaway proceeded to issue show cause notice under Section 5 (1). The Collector was required to first issue a notice under Section 4 giving specific grounds on which the order of eviction was proposed to be made. In the show cause notice issued to the present petitioners, certain grounds were specified but the Collector seemed to have already formed his opinion on the said grounds that the petitioners were in unauthorized occupation of public premises and should be evicted. It is obvious that no proper notice was given to the petitioners under Section 4 and the Collector straightaway proceeded to Section 5.

Composite proceedings have also prejudiced the petitioners' case because the petitioners were not able to show that their possession was legal. In the present case, the petitioners have raised weighty arguments to challenge the very ownership of the Gram Panchayat. These were necessarily required to be considered by the Collector at the stage of considering objections under Section 4. By-passing these provisions and apparently going straight to Section 5, the petitioners have been seriously prejudiced.

Consequently, it is held that the entire proceedings before the Collector and the Commissioner stand vitiated, as no proper notice under Section 4 was served on the petitioners and no opportunity was given to them to rebut the Panchayat's case before the Collector formed an opinion against them. Furthermore, the order of damages assessed under Section 7 was also required to be separately assessed. No order under Section 7 (2) could be passed against the petitioners without giving them a hearing why such order should not be passed.

In view of the above, the assessment of damages is also vitiated because neither the Collector's order nor the Commissioner's order show any separate assessment on the quantum of damages after hearing the petitioners.

These petitions are allowed. The respective orders of the Collector and the Commissioner passed under Sections 5 and 7 of the Act are hereby set aside.

The matter shall be re-heard by the Collector. The Collector's jurisdiction to pass the order was also challenged in these petitions on the ground that the Panchayat was not the owner of the premises in question.

This question cannot be examined by the Collector. The forum for determining questions of title in such cases is different.

As regards the quantum of damages, the petitioners shall have the opportunity to show cause in terms of Section 7 (3), whereafter the question will be determined afresh. The Collector shall decide the matter within three months on receipt of the certified copies of this order.

October 10, 2007
prem

(K.S. GAREWAL)
JUDGE